

REMARKS

Rejection of Claims 25, 42, and 43 under 35 U.S.C. § 103

Claims 25, 42, and 43 were rejected as obvious over WO 98/06402 (“Johnson”), US Pat. No. 5,494,911 (“Bartlett”), and US Appl. No. 2005/0124620 (“Frederickson”). The Office Action alleged that in each instance the difference between the prior art and the present claims is that whereas the prior art teaches H as the moiety corresponding to R²² of the present claims, the present claims recited that R²² is C₁₋₆-alkyl. For the following reasons, the applicants respectfully traverse.

In each of the compounds cited on the Office Action, the moiety corresponding to -L¹¹-R¹¹ is H. But claim 25 concludes “with the proviso that R²² is not CH₃ when R¹¹ is H.” Claim 25 also recites that L¹¹ is a covalent bond when R¹¹ is H. So, the proviso in claim 25 is equivalent to “the proviso that R²² is not CH₃ when -L¹¹-R¹¹ is H.” Thus, the genus alleged in the Office Action to be obvious over the cited art is expressly excluded from the scope of the present claims.

Restriction

As the present claims are free of the prior art, the applicants respectfully submit that they are entitled to search and examination of the full scope of the present claims. As previously noted, M.P.E.P. § 803.02 sets forth the procedure for restriction and examination of Markush claims:

An Examiner should set forth a requirement for election of a single disclosed species in a Markush-type claim. . . . Following election, the Markush-type claim will be examined fully with respect to the elected species, and further to the extent necessary to determine patentability. If the Markush-type claim is not allowable, the provisional election will be given effect and examination will be limited to the Markush-type claim and claims to the elected species. . . . Should applicant . . . overcome the rejection [e.g., by amendment] . . . the amended Markush-type claim will be reexamined. The examination will be extended to the extent necessary to determine patentability of the Markush-type claim.

As demonstrated above, the cited art does render obvious the present claims. Therefore, pursuant to M.P.E.P. § 803.02 the Office must examine the full scope of the Markush claims.

If the Examiner has any questions or comments regarding this Amendment, they are encouraged to contact the undersigned as indicated below.

Respectfully submitted,

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